1776 - 1899
Reconstruction To Jim Crow

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Perhaps more than any other sentence in our rich written political heritage, these words from the Declaration of Independence embody the highest ideals of American democracy. Yet, for most people in 1776, Thomas Jefferson's lofty words rang hollow. At the time, slavery had existed in the Western Hemisphere for nearly two centuries, and almost a fourth of the North American population lived in complete bondage.

When adopted in 1787, the fledgling U.S. Constitution said nothing of equality. On the contrary, in three key concessions to the South, it explicitly legitimized the institution of slavery, and prohibited Congress from abolishing it until at least 1808.

The Dred Scott Case


Frederick Douglass

In 1857, in what has been called the lowest moment in this nation's judicial history, the Supreme Court in *Dred Scott v. Sanford* ruled that blacks, as "subordinate and inferior beings," could not constitutionally be citizens of the United States, whether slave or free. The great Abolitionist leader Frederick Douglass' comments in reaction to *Dred Scott*, four years before the start of the Civil War, were prescient:

The Supreme Court is not the only power in this world. We, the abolitionists and colored people, should meet this decision, unlooked for and monstrous as it appears, in a cheerful spirit. This very attempt to blot out forever the hopes of an enslaved people may be one necessary link in the chain of events preparatory to the complete overthrow of the whole slave system.

The "Radical Republicans"


Abraham Lincoln

The history of affirmative action in civil rights is dominated by executive orders issued by Presidents impatient with slavery's legacy of racism. One of the first was President Lincoln's Emancipation Proclamation, issued on January 1, 1863, setting free the slaves in the Confederate states.

The Thirteenth Amendment, ratified on December 6, 1865 - six months after the Civil War ended - permanently abolished slavery. But the former Confederate states refused to let go, passing restrictive "Black Codes" to replace the former "Slave Codes." Freed slaves' status grew worse.

In 1866, Congress was dominated by the anti-slavery "Radical Republicans," who were infuriated by the South's recalcitrance. Andrew Johnson, the first president to face impeachment and trial by the Senate, was also the first to have his legislative veto overridden by Congress, on the first civil rights legislation in history. One of those major pieces of Reconstruction legislation was the Civil Rights Act of 1866, which stated that:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory, to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens.

Later in the year, Congress passed the Fourteenth Amendment to the Constitution, and sent it to the states for ratification. Intended to place the full weight of the Constitution behind the Civil Rights Act of 1866, the Fourteenth Amendment also applied the Bill of Rights to the actions of state and local government. Moreover, it conferred citizenship on all persons born in the U.S. (a right now under attack in Congress) and required states to provide all persons with "equal protection" of the laws and "due process" of law before taking away life, liberty or property. It was ratified on July 9, 1868.

In 1869, Congress passed the last of the Civil War Amendments, the Fifteenth Amendment, which guaranteed voting rights to all citizens, including freed slaves. It was ratified the following year.

Beyond these measures, the Radical Republicans engaged in other "affirmative" steps to enforce Reconstruction policies. Massive voter registration drives enrolled large numbers of freed slaves and Radical Republicans in states throughout the old South. The Freedmen's Bureau provided emergency assistance to displaced Southerners of all races, special tribunals settled racial disputes and a large Union Army contingent remained to enforce these reforms.

At first, it looked as though these reforms might actually succeed. In 1867, more blacks than whites were registered to vote in the ten states of the old Confederacy. Blacks and Radical Republicans controlled many state legislatures, and forward-thinking laws were passed. But it was not to last.

Jim Crow Takes Root

What white supremacists could not have through rule of law or victory at war was seized by thuggery, intimidation and violence. In the 1870s, the Klu Klux Klan joined with Confederate army veterans and so-called "white leagues" in an increasingly well-organized campaign against African Americans and Radical Republicans.

There was widespread mob violence and intimidation in the state and local elections of 1874 throughout the South. Black voting plummeted and Radical Republicans were soon replaced with old-line Southern Democrats. By the time Congress passed the last piece of Reconstruction Legislation, the Civil Rights Act of 1875, the tide of reform had already turned.


Rutherford B. Hayes

In 1876, the Republican Party abandoned the civil rights movement, nominating Rutherford B. Hayes for President. Soon after he was elected, in the "Compromise of 1877," Hayes eliminated Reconstruction enforcement programs and withdrew remaining federal troops from the South.

In 1883, the judicial branch added insult to the injury already inflicted by the executive. The Supreme Court struck down the Civil Rights Act of 1875, which barred discrimination by non-governmental entities. Emboldened, conservative southern legislatures passed a whole new round of segregationist statutes.

Called "Jim Crow" laws, after the title of a minstrel song portraying blacks as childlike and inferior, the new segregation measures dominated the lives of African Americans for decades to come. Blacks were excluded from white schools, jobs, theaters and restaurants, and the races were separated in any manner possible.

The constitutional validity of "Jim Crow" laws depended on the notion that segregated

public facilities were acceptable as long as they were roughly equivalent. When the question reached the Supreme Court in 1896 in the case of *Plessy v. Ferguson*, the high court again let down humanity, upholding the doctrine of "separate but equal."

As the Nineteenth Century drew to a close, the fate of African Americans grew worse. With the use of poll taxes, literacy tests and lynchings, the South all but disenfranchised its black citizens. In the North, discrimination in all aspects of life was also widespread, and race riots became increasingly commonplace at the emergence of the Twentieth Century.

Continue Through Our Affirmative Action Timeline 
Next

1900 - 1952
A. Philip Randolph to Thurgood Marshall

By the start of the Twentieth Century, 18 states of the North and West had laws against racial discrimination. But the Jim Crow Laws and poll restrictions persisted in the South. They in turn were met with a stronger and better organized opposition.


W.E.B. Du Bois

W.E.B. DuBois' 1905 "Niagra Movement" of African American intellectuals placed before the world an eloquent demand for equal rights and suffrage. Four years later, they joined with white reformers to found what was to become one of the most influential civil rights organizations in the world, the National Association for the Advancement of Colored People (NAACP).

As the civil rights movement grew in strength across the United States, the Supreme Court's decisions gradually began to reflect a more enlightened attitude. This trend began in 1917, in the case of *Buchanan v. Warley*, in which the Court held that a system of residential segregation enforced by the city of Louisville, Kentucky violated the Fourteenth Amendment. Incrementally, these decisions continued to chip away at segregation and other barriers throughout the Great Depression era.

Negro March On Washington Movement


A. Philip Randolph

In 1941, union leader and socialist A. Philip Randolph mobilized thousands of black workers in the "Negro March On Washington Movement," to persuade President Franklin D. Roosevelt to carry out civil rights reforms. Randolph's tactics presaged those of Dr. Martin Luther King, Jr. two decades later.

Roosevelt made a deal with Randolph: In exchange for calling off the march - which would have been a political embarrassment to his administration - FDR agreed to sign Executive Order 8802, barring segregation by government defense contractors.


Franklin D. Roosevelt

Some of Randolph's more militant supporters felt betrayed by the deal with Roosevelt. But the effects of Executive Order 8802 were great, increasing black wartime employment and signaling that the federal government would indeed take "affirmative" steps to help dismantle institutional racism.

Yet, even as this progress was made, African Americans were fighting - and dying - in segregated army divisions in World War II. It was not until 1948 that the armed forces became one of the few truly integrated American institutions of the time. Much more affirmative action would be required to break racism's hold on this country.


Thurgood Marshall

In the early 1950s, with Senator McCarthy's Cold War witch hunts in full swing, the NAACP nevertheless decided that the time was ripe to launch an attack on *Plessy v. Ferguson*'s ugly legacy of "separate but equal." The Supreme Court surprised even NAACP Legal Director Thurgood Marshall in 1952 when it granted him a hearing of five consolidated cases on the issue of segregation in public schools. The arguments of Marshall, who was later to serve a distinguished career as an associate justice of the Supreme Court, carried the day in *Brown v. Board of Education*, setting the stage for one of the most important decisions in American legal history.

1953 - 1963
Ascension of the Contemporary Civil Rights Movement

The notion of the government taking an active, or affirmative, role in dismantling institutional racism was underscored by President Harry Truman's Committee on Governmental Contract Compliance, which in 1953 urged the Bureau of Employment Security to:

> *act positively and affirmatively to implement the policy of nondiscrimination in its functions of placement counseling, occupational analysis and industrial services, labor market information, and community participation in employment services.*


Brown v. Board of Education
"Separate is inherently unequal."

The real firestorm over affirmative action, however, began in 1954, when the Supreme Court announced its decision in *Brown v. Board of Education of Topeka, Kansas*. Striking down all local, state and federal laws that enforced segregation in education, *Brown* was, incredibly, a unanimous opinion - all nine justices voting to overrule *Plessy v. Ferguson*. Newly-appointed Chief Justice Earl Warren, whose nomination Republican President Dwight Eisenhower was later to call one of his "greatest mistakes," wrote the opinion of the Court:

> *We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. . . . Any language in Plessy v. Ferguson contrary to this finding is rejected.*

In subsequent opinions, the Warren Court expanded its rejection of "separate but equal" to segregated public libraries, parks, beaches, hospitals and other publicly-funded facilities. But school desegregation would continue to vex the Court for years to come as it approved a range of race-conscious affirmative remedies in an effort to integrate the classroom.

Rosa Parks & Dr. Martin Luther King, Jr.


Rosa Parks

The Supreme Court had spoken in *Brown*, yet segregation pervaded, particularly in the South. When Rosa Parks refused to move to the back of the bus in Montgomery, Alabama, on December 1, 1955, a one-day boycott of the bus system led by local Baptist minister Martin Luther King, Jr. turned into a whole series of pickets and boycotts throughout the South. By 1957, Dr. King's Southern Christian Leadership Conference (SCLC) had a full-fledged peaceful resistance movement underway.

The Deep South, in particular, clung to its system of segregation tenaciously. As the sixties began, organizations such as the SCLC, the Student Nonviolent Coordinating Committee (SNCC) and Congress on Racial Equality (CORE) engaged in sit-ins, teach-ins, boycotts and freedom rides in a perilous attempt to force integration and reform. Thousands of students were arrested, and there were injuries and deaths at the hands of angry whites.

The Eisenhower administration had been reluctant to enforce the *Brown* decision aggressively in the South. When President John F. Kennedy took office, he immediately sought more tools to do so, in the form of civil rights legislation from Congress, but failed to persuade the legislators to


John F. Kennedy

act.

In 1961, Kennedy became the first President to use the phrase "affirmative action" when he issued Executive Order 10952. The order created the Equal Employment Opportunity Commission (EEOC) and directed contractors on projects financed with federal funds to

take affirmative action to ensure that applicants are employed, and employees are treated during their employment, without regard to race, creed, color or national origin.


Martin Luther King, Jr. March on Washington August 28, 1963

President Kennedy urged Congress to go beyond barring discrimination in enacting a comprehensive civil rights statute, to expand educational and employment opportunities for minorities. The relatively weak form of affirmative action he proposed included special apprenticeship and training programs. As Kennedy pointed out, "even the complete elimination of racial discrimination in employment - a goal toward which this nation must strive - will not put a single unemployed Negro to work unless he has the skills required." He did not live to see the new legislation enacted.

As 1963 progressed, America was horrified at the images of racism and violence against peaceful protesters in *Life* magazine and the evening television news. On August 28, 1963, a quarter-million Americans of all races joined in a march on Washington for racial justice - up to that time the largest demonstration in American history. The pressure grew on Congress to act decisively.

Previous Continue Through Our Affirmative Action Timeline Next

Legislation such as the Voting Rights Bill that was about to pass Congress, Johnson said, gave access to freedom - to vote, to hold a job, to go to school.

But freedom is not enough. You do not wipe away the scars of centuries by saying: Now, you are free to go where you want, do as you desire, and choose the leaders you please.

You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, "you are free to compete with all the others," and still justly believe you have been completely fair.

Thus it is not enough to open the gates of opportunity. All our citizens must have the ability to walk through those gates.

This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity - not just legal equity but human ability - not just equality as a right and a theory, but equality as a fact and as a result.

Little did LBJ suspect that the most direct assault on his modest affirmative action programs would come not in the sixties, but more than three decades later, from the likes of Newt Gingrich.

Previous Continue Through Our Affirmative Action Timeline Next

1964 - 1965
President Johnson & Congress Respond


President Johnson signs the Civil Rights Act of 1964

In 1964, after more than a century of ignoring the devastating effects of racism on this country, Congress finally broke the Southern filibuster and passed what has been called the most far-reaching civil rights enactment in world history.

Under the prodding of President Lyndon B. Johnson, Congress passed in the Civil Rights Act of 1964 a set of laws even stronger than President Kennedy first proposed. It barred discrimination in a wide variety of private and public settings:

- Title II of the Act prohibited discrimination in privately-owned facilities open to the public
- Title VI outlawed discrimination in federally-funded programs
- Title VII prohibited discrimination by both private and public employers

During Congressional debate on the Civil Rights Act of 1964, there was disagreement about whether the emphasis should be on pursuing individual cases of discrimination, or instead in a frontal assault on broad discriminatory practices in education, employment and housing. While that remained unresolved, the overall intent was clear - to bar discrimination and redistribute educational and employment opportunities.

Executive Order 11246


Lyndon B. Johnson

In 1965, Congress passed the Voting Rights Act, which put some enforcement "teeth" in the Fifteenth Amendment. The Act gave the U.S. Department of Justice broad authority to take affirmative steps to eliminate exclusionary practices, particularly in the Deep South.

That same year, President Lyndon Baines Johnson issued Executive Order 11246, which placed primary responsibility for affirmative action enforcement with the Department of Labor. The Department's Office of Federal Contract Compliance Programs (OFCCP) promulgated regulations which required all those with government contracts worth more than $10,000 to agree to a set of nondiscrimination provisions that included:

> *The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.*

To accomplish this goal, the OFCCP required contractors to submit affirmative action plans which analyzed the demographics of their existing work force and indicated proactive measures the employer would take to move toward greater equality. Such measures might be as modest as advertising available positions in minority publications or training hiring managers in discrimination law.

On June 4, 1965, in a speech to the graduating class of Howard University, President Johnson articulated well the reasoning behind these new "affirmative" measures.

1968 -1977
Civil Rights Act of 1968 through Nixon's Retreat

One week after Dr. Martin Luther King, Jr. was assassinated on a botel balcony in Memphis, Tennessee, Congress passed the nation's first open housing law, the Civil Rights Act of 1968. At the same time, the Supreme Court was in the process of upholding the Civil Rights Act of 1964 and subsequent legislation.

Throughout the 1960s and 1970s, the federal court system at all levels was responsible for crafting a variety of innovative affirmative action programs, in response to deeply entrenched racism and segregation. Judges looked not only to the most recent progressive legislation from Congress, but also the largely unused protections granted in the Reconstruction Amendments (13th, 14th, 15th) and other early civil rights legislation.

The Philadelphia Plan


Richard M. Nixon

Republican Richard M. Nixon - never a President easily defined - was at first a champion, and then a foe, of affirmative action in this country. Ironically, it was his program of 1970, the "Philadelphia Plan," which delved more deeply than before into numerical goals and timetables, the most aggressive (and least employed) form of modern affirmative action.

The need for the aggressive action in the American construction industry was particularly acute in 1970. The author of the Philadelphia Plan was Assistant Secretary of Labor Arthur Fletcher, at the time among the very few blacks in the central Nixon administration. Fletcher described his rationale in an essay published in George Curry's 1996 collection, *The Affirmative Action Debate*:

> *At the time, the new interstate highway system represented a $40 billion economy consisting of taxpayers' dollars. And most of the work was controlled by unions, groups that wouldn't let blacks near a job, let alone hold one. We decided to concentrate on the craft unions and the construction industry. They were, and still are to a considerable degree, among the most egregious offenders against equal opportunity laws. Not only were they openly hostile toward letting blacks into their closed circle; they had their own separate fiefdoms - a fact that would ultimately work to my advantage.*
>
> *Philadelphia seemed to be the perfect test case. It had sixteen craft unions servicing the construction industry. And the vast majority of the members of some unions even had the same type of surname: Polish or Italian or Irish and so on. If you didn't have that type of name, you didn't participate. In essence, public taxes were being used to take care of a family clan called a union. So I asked the question, Are we in the business of taking care of the Kawaski family? In the Philadelphia area we even found Italians with green cards who couldn't speak English, let alone read or write a word, sentence, or paragraph - yet who were working on federal contracts. At the same time, those same unions and contractors were saying they couldn't find qualified blacks.*

The Philadelphia Plan was embodied in Labor Department Order No. 4, which was revised in 1971 to include women as well as minority workers. Under Order No. 4, some major companies and educational institutions were eventually required to initiate affirmative action plans to employ and promote more women and minorities.

Also in 1971, the U.S. Commission on Civil Rights issued a report which concluded that

the various federal equal employment opportunity programs and agencies were failing at their task. Spurred by the report, Congress enacted the Equal Employment Opportunity Act of 1972, which extended the EEOC's jurisdiction to employers with more than 15 employees, unions with at least 15 members and all governmental employees at all levels. It also gave greater emphasis to systemic discrimination, broadening the right to maintain class-action suits.

Nixon's initial support appears to have been part of a political strategy to bring black voters over to the Republican party, an effort that was never highly successful. But toward the end of his presidency, he advocated a Constitutional amendment to bar the practice of busing schoolchildren to achieve desegregation. The seeds were sewn for the white backlash to reforms, in the form of a broad-based attack on civil rights laws and affirmative action in the years to come.


Previous

Continue Through Our Affirmative Action Timeline


Next

1978 - 1991
The Backlash: Alan Bakke to George Bush

In 1978, the Supreme Court issued a preview of the coming era of conservative retreat from affirmative action, with the case of *Regents of the University of California v. Bakke*. The medical school at the University of California at Davis set aside sixteen (of 100 total) places in each entering class for disadvantaged and minority students, who were considered in a separate admissions system. While the legitimacy of using race-conscious remedies under some circumstances was upheld in *Bakke*, the many separate opinions issued by the justices in the case read like a debate on the underlying issues.

Five of the nine justices agreed that the rights of rejected white applicant Alan Bakke were violated by the UC Davis plan. But the Court split with no majority on nearly every specific legal issue at stake. A plurality of four justices - Brennan, White, Marshall and Blackmun - maintained that an affirmative action program could lawfully take into account race for the "benign" purposes involved. Such uses of race, they argued, should be judged by an "intermediate" level of court scrutiny, such that they need not be necessary for (but only rationally related to) achieving an important governmental interest. Only one justice, Powell, argued to apply to affirmative action the standard of strict scrutiny, which was employed in assessing "invidious" (meant to exclude) discrimination.

The same year, in *United Steelworkers v. Weber*, the Court upheld a voluntary affirmative action plan entered into between a private company and its union, even though there had been no governmental determination of past racism. One portion of Title VII says that the statute does not "require" employers and unions to use race-conscious remedies to correct racial imbalances without a court finding of discrimination. In *Weber*, the Court held that Congress could have excluded voluntary programs by stating that the law did not "require or permit" such plans.

Reagan's Frontal Assault On Civil Rights


Ronald Reagan

Ronald Reagan seized upon the Supreme Court's decision in *Weber*, and made opposition to affirmative action a centerpiece of his successful 1980 campaign. It was a message that reverberated with a large number of increasingly insecure middle class white voters during a period of great overall change in the employment sector.

Soon after taking office in 1981, President Reagan made good on his promises. He appointed to key positions persons openly hostile to affirmative action - most notably, Clarence Thomas and Clarence Pendelton, Jr. to the EEOC, and Antonin Scalia and Anthony Kennedy to the Supreme Court.

Reagan's two terms in office had an enormous overall impact on the philosophy of the federal judiciary, with a record number of judges appointed under a careful screening process for conservatism. Reagan was somehow able to maintain an aggressive campaign against civil rights without losing overall popularity in the polls. He cut the funding of the OFCCP and EEOC, rendering them "toothless tigers." He supported repeal of key sections of the Voting Rights Act and targeted affirmative action for constant attack, falsely labeling it as a program of "racial quotas" and "reverse discrimination."

George Bush & The Civil Rights Act of 1991


George Bush

While not publicly taking the strident anti-affirmative action stand of his predecessor, George Bush was no friend of progress in civil rights during his four years in office. As with Reagan, his judicial appointees were often poison to the civil rights struggle in the courts. And he campaigned against the first major piece of civil rights legislation to pass Congress in twenty years.

By 1989, the Supreme Court and several of the federal appeals courts had issued numerous rulings calling into question long-settled issues in civil rights. Then two cases were announced by the high court that particularly outraged the civil rights community.

In *Wards Cove v. Atonio*, the Supreme Court reversed 18 years of legal precedent under the Civil Rights Act of 1964, when it moved the burden of proof in "discriminatory impact" cases from the employer to the complaining victim of discrimination. And in *Patterson v. McLean Credit Union*, the Court ruled that the Civil Rights Act of 1866 did not prohibit racial harassment on the job. As dissenting Justice Harry Blackmun wrote: "One wonders whether the majority still believes that discrimination is a problem in our society, or even remembers that it ever was."

The civil rights community reacted swiftly, proposing remedial legislation, the Civil Rights Act of 1990. President Bush lobbied against the Act, which he mischaracterized as a "quota bill." He vetoed the legislation in October 1990.

By the following year, the political climate had changed markedly. The Senate had just confirmed Clarence Thomas as a Supreme Court associate justice, following the contentious Anita Hill hearings. Bush was surprised by the vehemence with which his prior year's civil rights veto was met. He was pressured into expressing support for a middle-of-the-road version of the corrective legislation, which Congress promptly passed.

The Civil Rights Act of 1991 did greatly help individual victims of discrimination who seek redress through the courts, although punitive damages available for non-race claims are now limited. But the legislative history of the Act demonstrates that Congress and the Bush Administration could not agree on the permissible scope of affirmative action and other race-conscious remedies for discrimination, leaving the issue to be decided case-by-case by an increasingly conservative federal judiciary.

Previous Continue Through Our Affirmative Action Timeline Next

Before Clinton's affirmative action review was concluded, an extremely conservative Supreme Court issued a closely divided opinion in *Adarand Constructors, Inc. v. Peña*. The decision restricted, but did not strike down, affirmative action in the granting of federal highway construction contracts. In an extension of the logic it had used against state and local governmental affirmative action programs in its 1989 decision in *Richmond v. Croson*, the Court in *Adarand* held that federal government affirmative action programs would also be subject to "strict scrutiny."

Prior to *Croson* and *Adarand*, courts applied separate tests for judging governmental action which employed race as a criterion, depending on whether the use was "benign" (meant to include) or "invidious" (meant to exclude). If the use of race was invidious, a "strict scrutiny" standard applied, requiring that the government prove: (1) it was necessary to achieve a compelling government interest and, (2) it was narrowly tailored to accomplish this end. If the use of race was benign, an "intermediate scrutiny" standard only required that the government show the use of race was rationally related to accomplishing an important governmental goal.

By raising the standard used to review affirmative action, the Supreme Court erected yet another barrier to achieving a diverse work force. But the timing of the decision was politically fortuitous. After all, if a staunchly conservative Supreme Court upheld, but restricted, affirmative action, why did Congress need to go further? In effect, it appeared the justices had taken up the President's line on affirmative action: "Mend it, don't end it."

Fending Off The Republican Assault

President Clinton acted swiftly. On July 19, 1995, one week after *Adarand* was rendered, he delivered a speech at the National Archives to announce the completion of his five-month review of affirmative action. In it, he reaffirmed his long-established support of affirmative action. First, he said, the government must be vigilant to ensure affirmative action programs are not exploited or misused.

Clinton at National Archives
July 19, 1995
"Mend it, but don't end it."

Second, we must, and we will, comply with the Supreme Court's Adarand decision of last month. Now, in particular, that means focusing set aside programs on particular regions and business sectors where the problems of discrimination or exclusion are provable and are clearly requiring affirmative action. I have directed the Attorney General and the agencies to move forward with compliance with Adarand expeditiously.

But I also want to emphasize that the Adarand decision did not dismantle affirmative action and did not dismantle set asides. In fact, while setting stricter standards to mandate reform of affirmative action, it actually reaffirmed the need for affirmative action and reaffirmed the continuing existence of systematic discrimination in the United States.

Senator Dole did introduce legislation to curtail affirmative action, but never actively pursued it. In describing the political climate following the President's speech, the *New York Times* commented:

It was, some analysts say, the defining moment of Clinton's presidency in the civil rights area, and it knocked the pins out from under his opponents. Outflanked by Clinton, the Republicans, especially Dole, backed away from the affirmative action issue.

"Chameleon Man"


California Gov. Pete Wilson

Seemingly oblivious to these political developments, California Governor Pete Wilson moved forward the day after President Clinton's National Archives speech to quite publicly end affirmative action in the massive University of California system amid widespread protest. Wilson reaffirmed his support of Proposition 209, which applied to all state programs. Although he had heen pro-affirmative action throughout his career as mayor of San Diego, U.S. senator and governor, Wilson appears to have miscalculated that this "race card" would assure him the GOP nomination. After all, Wilson - aptly described in a Mother Jones 1996 election profile as "chameleon man, a human lizard clinging to the nation's Pacific wall" - had been pro-immigration for most of his political career. But he had no problem using 1994's anti-immigrant Proposition 187 to his political advantage.

He clearly viewed affirmative action as the scapegoat *du jour*. He was wrong, and his campaign limped to a halt in September of 1995.

But Wilson's legacy continued. His racial rhetoric appealed to a significant number of Californians in November of 1996, who voted for Clinton but also approved Proposition 209. The reverberations would be felt nationwide.

Prior to the '96 elections, affirmative action programs in higher education in Texas, Mississippi and Louisiana were impacted when the Supreme Court refused to review an adverse Fifth Circuit appellate decision in *Hopwood v. Texas*. The forces against affirmative action were moving into high gear.

Previous Continue Through Our Affirmative Action Timeline Next

1997 & Beyond
Setting the Course for the 21st Century


Martin Luther King III

On January 18, 1997, in response to the right-wing assault on affirmative action nationwide, Martin Luther King III announced the formation of Americans United for Affirmative Action. A national, non-profit organization based in Atlanta, AUAA is committed to educating the public on the importance of affirmative action and equal opportunity.

Immediately, there was a crisis awaiting action by AUAA. Early in March 1997, Colorado Republicans had momentum behind legislation to bar state affirmative action in a manner similar to California's Proposition 209. The Colorado attorney general claimed the law was necessary in light of recent U.S. Supreme Court decisions on the subject.

AUAA's lobbying efforts included an op-ed piece in the March 16 *Denver Post* and letters from Martin Luther King III to each state senator. Delivered on March 17, the date the Colorado Senate was to debate its version of the legislation, King's letter urged the senators to "take the moral high ground" in rejecting the legislation. In his letter, King said

> *Until we morally achieve a colorblind and gender-blind society, our laws must regard race and gender to provide equal protection to all.*

On March 19, 1997, the Colorado Senate Judiciary Committee abandoned the bill, voting not to take action on it. Herman Malone, chair of the National Black Chamber of Commerce, credited AUAA's efforts in fending off the conservative attack.

Attacking 209 in the Courts

The day after California voters passed Proposition 209 last fall, the American Civil Liberties Union and a coalition of civil rights groups filed suit to block enforcement. U.S. District Court Judge Thelton Henderson issued a preliminary injunction, ruling the ACLU was substantially likely to prevail on the merits.

On April 9, 1997, a panel of three judges from the Ninth Circuit Court of Appeals disagreed, ruling Proposition 209 was constitutional. The next day, the Clinton administration announced it would continue to challenge the state initiative.

The ACLU filed for a rehearing of the case before an *en banc* panel of eleven Ninth Circuit judges. As of this writing, there has been no ruling on the rehearing request, and a stay on enforcement of 209 remains in effect. The case may well end up before the Supreme Court for final resolution.

One America: The President's Initiative on Race

On June 14, in a highly publicized speech in San Diego, President Clinton launched a year-long initiative on race he called "One America." Culminating with a report to the American people to be released in the summer of 1998, the Initiative will center on an advisory board led by historian and educator John Hope Franklin. The timing is crucial, given the opposition's ongoing press of legislative and judicial attacks.

In his speech, the President again reiterated his support for affirmative action, and made reference to Proposition 209:

Clinton Keeps Up The Pressure

President Clinton With NAACP President Kweisi Mfume At Annual Convention July 17, 1997

On July 17, the President again used his "bully pulpit" on behalf of affirmative action, in what was described as the "second stage" of his year-long initiative. Speaking at the annual NAACP convention in Pittsburgh, and later in the day at the National Association of Black Journalists' convention in Chicago, his message was well received. But he caught some flak from his own commission chair, John Hope Franklin, who suggested a white audience would have stood to gain more from the education.

Clinton vowed to fight to preserve existing affirmative action programs, and toward overturning new restrictions imposed by states such as California and Texas. "[W]e can reverse it in . . . a couple of years," he declared.

Of the most recent dismal minority admission rates to public graduate schools in those two states, Clinton said:

> *It's a great concern to me, and I think it is moving the country in the wrong direction. . . . I think a lot of people who even voted for 209 have been pretty shocked at what happened, and I don't believe the people of California wanted that to occur. And I think the rhetoric sounded better than the reality to a lot of voters.*

The headline on the front page of the July 18, 1997 *San Francisco Chronicle* was telling, as California graduate schools saw the first effects of the elimination of affirmative action: "UC Law Schools at Wits' End As Minorities Go Elsewhere."

And so the fight continues. Won't you join with AUAA in support of civil rights in the Twenty-first Century?

Previous Continue Through Our Affirmative Action Timeline Next

---

At Issue:

Should affirmative action be abolished?

CLINT BOLICK
Vice president, Institute for Justice

WRITTEN FOR THE CQ RESEARCHER, APRIL 1995.

YES

In 1965, Americans were asked to make a "temporary" exception to the otherwise absolute principle of non-discrimination embraced by the civil rights act passed a year earlier. Race-conscious affirmative action was based on the risky premise that the power of government to discriminate could somehow be harnessed in a narrowly targeted and beneficent way.

That premise was wrong. Our entire nation's history is testimony that discrimination by government on the basis of race or gender is never benign, and the last 30 years have proved no exception.

Defenders of the status quo intentionally confuse affirmative action with the nation's vast array of anti-discrimination laws — which accounts for polls showing a majority in favor of "affirmative action" but even more opposed to race and gender preferences. The fact that discrimination remains a problem in our society means that anti-discrimination laws should remain on the books and strictly be enforced. Race and gender preferences, by contrast, are themselves discriminatory.

Such preferences proliferate at every level of government. A recent Congressional Research Service report lists 160 preference programs in the federal government, a number multiplied exponentially in states, cities and universities from coast to coast. These preferences violate the basic principle of fairness that forms the bedrock of our nation's civil rights consensus.

By definition, such programs assign benefits or burdens on the basis of group characteristics that, in and of themselves, say nothing about individual merit or disadvantage. As sociologist William Julius Wilson has demonstrated, such policies tend to concentrate their benefits on the members of the preferred groups who possess the greatest skills or resources. . . .

For the truly disadvantaged, however, race-based programs are, in the words of Yale law Professor Stephen Carter, "stunningly irrelevant." By contrast, race-neutral efforts such as school vouchers, enterprise zones, inner-city anti-crime efforts and tenant ownership of public housing are aimed more precisely at eliminating barriers to opportunity. The race-conscious tools of the 1960s are not what we need to confront problems of the '90s that transcend race.

Sen. Bob Dole, R-Kan., and Rep. Charles T. Canady, R-Fla., are leading efforts to draft a bipartisan civil rights act that would deny government the power to discriminate, once and for all. Those who claim such efforts are racially divisive have it exactly backwards: It is our current practice of classifying people by race for purposes of voting, education, jobs, and government contracts that fuels race-consciousness and division.

There is but one "goal and timetable" we all should support: The goal is non-discrimination, and the timetable is now.

RALPH G. NEAS
Executive director, Leadership Conference on Civil Rights

WRITTEN FOR THE CQ RESEARCHER, APRIL 1995.

NO

Affirmative action is an American success story. Thanks in large measure to affirmative action, millions of women and minorities have been given an equal opportunity in education, employment, housing and voting.

While many private and public studies corroborate the effectiveness of affirmative action for women and minorities, numerous studies and congressional hearings also show, regrettably, that serious discrimination still exists in our country. Thus, there is still a need for affirmative action. As long as there is discrimination based on race or gender, race- and gender-conscious remedies must be available.

There has long been bipartisan support for affirmative action. And public opinion polls show that a majority of Americans continue to support affirmative action programs for minorities and women. Yet, these same polls also indicate that there is much confusion about the facts and the law regarding affirmative action.

For example, some Americans equate affirmative action with quotas or preferences. But the law is clear that employers cannot hire or promote strictly by the numbers, nor can they prefer someone simply because of race or gender.

Some Americans believe that affirmative action allows employers to hire unqualified workers. But an affirmative action program involving unqualified individuals would be impermissible under the law. While recent studies have once again shown that reverse discrimination is rare, sometimes employers use illegal quotas or preferences, usually out of ignorance or an unwillingness to take the time to prepare an appropriate affirmative action plan. The solution for such situations is to enforce the law, not to repeal the law.

Who are the beneficiaries of affirmative action? To be sure, women and minorities have been major beneficiaries of affirmative action over the past three decades. Few realize, however, that white males are also beneficiaries. Before affirmative action, the "old-boy's network" way of doing things prevailed. Because of affirmative action, fairness is now the rule, guaranteeing more opportunity for white males as well as minorities and women to compete for jobs. . . .

Over the next few months, we must ensure that the public gets all the facts about affirmative action. We must be especially vigilant to make sure that some opponents of affirmative action do not play "scapegoat politics," encouraging victims of a changing economy to blame one another for anxieties about their employment situation.

I am confident that efforts to eliminate affirmative action will fail. Such efforts will fail because enough Republicans and Democrats understand that if the American dream of fairness and merit in the workplace is to become reality, affirmative action must remain an available option.